

Horizons Hotel Corporation d/b/a Carib Inn Tennis Club and Casino and/or Hotel Associates, Incorporated and Union de Trabajadores de la Industria Gastronomica de Puerto Rico, Local 610, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 24-CA-5423

April 30, 1997

SECOND SUPPLEMENTAL DECISION AND ORDER REMANDING

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 29, 1996, the National Labor Relations Board issued a Supplemental Decision and Order Remanding in this proceeding¹ in which it granted the General Counsel's Motion to the Board for Partial Summary Judgment with respect to the compliance specification's paragraphs 12 and 13, and paragraph 14 regarding gross backpay. The Board remanded the case to the Region to arrange for a hearing before an administrative law judge, which would be limited to taking evidence concerning paragraphs 1 through 11 of the compliance specification.

Thereafter, on December 18, 1996, the General Counsel filed another Motion to Transfer Case to and Continue Proceeding before the Board and for Partial Summary Judgment, with exhibits attached. The General Counsel pointed out that in a related case, *Carib Inn Tennis Club & Casino*, Case 24-CA-6726,² the Board had found that Horizons Hotel and Hotel Associates are a single employer and alter egos. Based on the Board's decision in that case, the General Counsel requested that the Board grant partial summary judgment on paragraphs 1 through 11 (and a portion of par. 14), which allege that Hotel Associates is derivatively liable for gross backpay as a successor, a single employer, a joint employer, or an alter ego of Horizons Hotel.

On December 20, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. Hotel Associates subsequently filed a response to the Notice to Show Cause.

On the entire record, the Board makes the following

Ruling on the Motion for Partial Summary Judgment

We agree with the General Counsel that the Board's decision in *Carib Inn Tennis Club & Casino*, supra, dictates a finding in this case that Horizons Hotel and Hotel Associates are a single employer and alter egos. It is well established that the Board will take official

notice of its own decisions and that, where a material issue of fact is identical and the parties are the same, a finding in one proceeding on a particular issue may be a basis for making the same finding in a subsequent case.³ Because the Board's earlier decision involved identical facts and the same parties as the present case, we take official notice of our previous findings that Horizons Hotel and Hotel Associates are both alter egos and a single employer.

Hotel Associates raises no arguments in its response to the Notice to Show Cause that are sufficient to warrant a hearing on these issues. Thus, although it contends that the General Counsel's compliance specification does not account for the discriminatees' interim earnings, we reiterate our previous finding that the Respondent can fully litigate these issues at the compliance hearing. Hotel Associates also contends that summary judgment is inappropriate here because it has filed a petition with the First Circuit Court of Appeals to review the Board's alter ego and single employer findings in Case 24-CA-6726. We note, however, that the Board is entitled to rely on its own decisions even while they are pending on review in a circuit court of appeals.⁴

Therefore, pursuant to Sections 102.24 and 102.56(c) of the Board's Rules and Regulations, we deem to be admitted as true compliance specification paragraphs 4, 5, 9, 10 and a portion of paragraph 14,⁵ and the portion of paragraph 11 alleging that the Respondents are both a single employer and alter egos.⁶

³ *Advertisers Mfg. Co.*, 275 NLRB 100, 102 (1985).

⁴ See *Superior Industries (II)*, 295 NLRB 320, 322 fn. 7 (1989) (although *Superior I*, in which the Board found that the union was the certified exclusive collective-bargaining representative of the unit employees, was at that time pending on appeal to the circuit court of appeals, the Board held in *Superior II* that unless and until the court reversed the Board in *Superior I*, the Board had made a final determination, applicable in *Superior II*, that the union was the exclusive collective-bargaining representative of the unit employees); *Rockwood & Co.*, 281 NLRB 862 fn. 1 (1986) (the fact that the respondent may seek review of an earlier Board decision in a circuit court of appeals does not warrant Board suspending action in the case at hand); *Maywood Do-Nut Co.*, 256 NLRB 507, 508 (1981) (the Respondent's continued refusal to bargain pending the outcome of an earlier Board case presently before the circuit court of appeals constitutes an additional violation of Sec. 8(a)(5); it is settled law that the pendency of collateral litigation does not suspend a respondent's duty to bargain).

⁵ The Board's earlier decision in this proceeding noted that, if the General Counsel established that Hotel Associates was derivatively liable for gross backpay, then Hotel Associates would be bound by Horizons Hotel's failure to provide an adequate answer to the gross backpay computations in par. 14 of the specification. 320 NLRB 1114 at fn. 4. Thus, based on our finding here that Hotel Associates and Horizons Hotel are both a single employer and alter egos, we now conclude that Hotel Associates is responsible for gross backpay as alleged in par. 14.

⁶ The Board in Case 24-CA-6726, reported at 322 NLRB 214, did not reach the issue of whether there also is successorship or joint employer status. We find it unnecessary to pass on the compliance

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¹ 320 NLRB 1113.

² 322 NLRB 214 (1996).

Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment on these paragraphs of the compliance specification and shall direct a hearing limited to the issue of the discriminatees' interim earnings.

ORDER

IT IS ORDERED that the General Counsel's Motion to the Board for Partial Summary Judgment is granted with respect to the compliance specification's paragraphs 4, 5, 9, 10 and a portion of paragraph 14, as

specification's pars. 1-3, 6-8, and the remaining portion of 11 raising such allegations in this case. There is no need to reach these issues here in light of our findings that Hotel Associates is derivatively liable for gross backpay, in any event, as a single employer and alter ego.

well as the portion of paragraph 11 relating to the Respondents' status as alter egos and single employers.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 24 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning the discriminatees' interim earnings and their efforts to mitigate damages during the backpay period.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.56 of the Board's Rules shall be applicable.